

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GARY BANKS, )  
 ) 1:08cv004  
 )  
Plaintiff, ) Judge Cercone  
 ) Magistrate Judge Lenihan  
 v. )  
 )  
LT. MARK MOZINGO, et al., )  
 )  
 )  
Defendant. )

**MEMORANDUM ORDER**

The above captioned case was initiated by the filing of a Motion to Proceed *In Forma Pauperis* (doc. no. 2) on January 22, 2008, and was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

Magistrate Judge Lisa Pupo Lenihan filed a Report and Recommendation on November 6, 2008 (doc. no. 35), recommending that the Motion to Dismiss filed by Mike Hice (doc. no. 23) be granted and that the Partial Motion to Dismiss filed by the Commonwealth Defendants (doc. no. 27) be granted as to Defendants Maue, Krysvig, and Couterier and denied as to Defendant Richter, incorrectly identified as "Richie" in the caption of the Complaint. It further recommended that Plaintiff's claims against the Commonwealth Defendants in their official capacity be dismissed under the PLRA. Plaintiff was served with the Report and

Recommendation and advised that he had until November 24, 2008 to file objections to the Report and Recommendation. On November 24, 2008, Plaintiff filed a Motion for Extension of Time to File Objections. On November 25, 2008, the Court granted Plaintiff's Motion and ordered him to file his objections by December 8, 2008. No objections have been filed.

After *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 23<sup>rd</sup> day of February, 2009;

**IT IS HEREBY ORDERED** that the Motion to Dismiss filed by Mike Hice (doc. no. 23) is **GRANTED**.

**IT IS FURTHER ORDERED** that the Partial Motion to Dismiss filed by the Commonwealth Defendants (doc. no. 27) is **GRANTED** as to Defendants Maue, Krysivig, and Couterier and **DENIED** as to Defendant Richter, incorrectly identified as "Richie" in the caption of the Complaint.

**IT IS FURTHER ORDERED** that Plaintiff's claims against the Commonwealth Defendants in their official capacity are **DISMISSED** under the PLRA.

**IT IS FURTHER ORDERED** that the Report and Recommendation (doc. no. 35) of Magistrate Judge Lenihan dated November 6, 2008, is **ADOPTED** as the Opinion of the Court.



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David Stewart Cerccone  
United States District Judge

cc: Honorable Lisa Pupo Lenihan  
United States Magistrate Judge

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